STATE OF MICHIGAN

COURT OF APPEALS

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO (UAW) and UAW LOCAL 412,

Plaintiffs-Appellants,

v

CHARTER TOWNSHIP OF CLINTON,

Defendant-Appellee.

UNPUBLISHED
July 31, 1998

No. 199188
Macomb Circuit Court
LC No. 94-000495-CL

Before: Sawyer, P.J., and Wahls and Reilly,[1] JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's entry of judgment in favor of defendant after the trial court vacated a binding arbitration award in favor of plaintiffs. We reverse and remand for further proceedings.

Judicial review of an arbitrator's decision is narrowly circumscribed. *Gogebic Medical Care Facility v AFSCME*, 209 Mich App 693, 696; 531 NW2d 728 (1995).

> The necessary inquiry for this Court's determination is whether the award was beyond the contractual authority of the arbitrator. Labor arbitration is a product of contract and an arbitrator's authority to resolve a dispute arising out of the appropriate interpretation of a collective bargaining agreement is derived exclusively from the contractual agreement of the parties. It is well settled that judicial review of an arbitrator's decision is limited. A court may not review an arbitrator's factual findings or decision on the merits. Rather, a court may only decide whether the arbitrator's award "draws its essence" from the contract. If the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. [*Id.* at 696-697,

quoting *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989) (citations omitted).]

In this case, the arbitrator was called upon to determine whether the parties' collective bargaining agreement had been violated when the Housing Commission for Clinton Township did not hire a full-time employee at the Office Clerk 1 wage rate after its previous clerk transferred to a job with the police department. In order to determine whether the contract was violated, the arbitrator first had to determine whether the housing commission position was part of the collective bargaining unit. The arbitrator addressed this issue, analyzed the evidence presented and determined that the position was in the collective bargaining unit. However, when plaintiffs sought to enforce the arbitrator's decision, the circuit court concluded that the arbitrator had exceeded the scope of her authority by determining the composition of a bargaining unit.

The Public Employment Relations Act (PERA)[2] and the Labor Mediation Act (LMA)[3] both assign the task of determining an appropriate collective bargaining unit to the Michigan Employment Relations Commission (MERC). MCL 423.213; MSA 17.455(13); MCL 423.9e; MSA 17.454(10.4); *Local 128, AFSCME v Ishpeming*, 155 Mich App 501, 515; 400 NW2d 661 (1986). Our Supreme Court "has consistently construed the PERA as the dominant law regulating public employee labor relations." *Rockwell v Crestwood School District Board of Ed*, 393 Mich 616, 629; 227 NW2d 736 (1975). The Supreme Court has also recognized "the apparent legislative intent that the PERA be the governing law for public employee labor relations." *Id.* at 630. Finally, the Supreme Court has concluded that "[t]he PERA was intended to occupy the public employee labor relations field completely." *Lamphere Schools v Lamphere Federation of Teachers*, 400 Mich 104, 116; 252 NW2d 818 (1977). While *Rockwell* and *Lamphere Schools* did not deal with the exact issue presented here, they suggest that the MERC is vested with exclusive jurisdiction to determine the composition of bargaining units. However, those cases do not necessarily resolve the question whether the arbitrator exceeded her authority in this case.

While we acknowledge that the MERC has superior jurisdiction to decide the composition of a bargaining unit, it is not clear that parties must wait for the MERC to rule on that issue before proceeding to arbitration. In construing the PERA, our Supreme Court frequently looks to the interpretation of analogous provisions of the National Labor Relations Act (NLRA) by the federal courts. *Grandville Mun Executive Ass'n v City of Grandville*, 453 Mich 428, 436; 553 NW2d 917 (1996). The United States Supreme Court has held that the fact that the National Labor Relations Board (NLRB) has jurisdiction to decide the composition of bargaining units does not preclude arbitration of related issues *before* the NLRB determines the scope of the bargaining unit. *Carey v Westinghouse Electric Corp*, 375 US 261, 272; 84 S Ct 401; 11 L Ed 2d 320 (1964). As the Court said in *Carey*: "[T]he Board's ruling would, of course, take precedence; and if the employer's action had been in accord with that ruling, it would not be liable for damages . . . . Yet, . . . the possibility of conflict is no barrier to resort to a tribunal other than the Board." *Id.* The NLRB is the federal equivalent of the MERC. Thus, *Carey* strongly suggests that an arbitrator's decision should stand unless and until the MERC makes a contradictory finding. We agree with the rationale in *Carey*,[4] and

we thus conclude that the circuit court erred in refusing to enforce the arbitration award on the ground that the arbitrator exceeded her authority.

Plaintiffs also claim that the housing commission should have been bound by the arbitration decision even though it was not a party to the arbitration. However, even if we agreed with plaintiffs, the housing commission would not be bound by our decision, since it is not a party to this appeal. Thus, we decline to address this issue.

Ordinarily, we would simply reverse the circuit court and remand for enforcement of the arbitration's decision against defendant. However, while this appeal was pending, the MERC apparently addressed and resolved these issues. As noted above, the MERC has superior jurisdiction to decide the composition of a bargaining unit, and its decision will take precedence over that of the arbitrator.[5] Therefore, we reverse and remand to the trial court for reconsideration in light of this opinion, and in light of the MERC's decision.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Myron H. Wahls

Judge Reilly did not participate.

[1] Judge Reilly did not participate in the decision of this case.

[2] MCL 423.201 *et seq*.; MSA 17.455(1) *et seq*.

[3] MCL 423.1 *et seq*.; MSA 17.454(1) *et seq*.

[4] The Michigan Supreme Court has already recognized this rationale. See *Bay City Schools v Bay City Ed Ass'n*, 425 Mich 426, 440-443; 390 NW2d 159 (1986).

[5] While we acknowledge the MERC's decision, we decline to address its content in this appeal.